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Alan B. Clement HEDMAN & COSTIGAN, P.C. 1185 Avenue of the Americas New York, NY 10036			EXAMINER LARSON, JUSTIN MATTHEW	
			ART UNIT 3727	PAPER NUMBER
DATE MAILED: 12/15/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/665,397

Applicant(s)

RISTAU, HARALD

Examiner

Justin M. Larson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 June 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/17/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on 8/17/04 is noted. The submission is in compliance with the provisions of 37 CFR 1.97 and 1.98. Accordingly, the examiner is considering the information disclosure statement.

Oath/Declaration

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

It does not identify the citizenship of each inventor.

Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 4, 6, 13, 14, 15, and 16.

4. The drawings are further objected to because in Figures 1 and 2, reference character 16 is associated with two different parts of the invention, one part being the handle opening and the other part being an edge of the handle.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the rectangular shape of the lower support member must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

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6. Finally, the drawings are objected to because it is unclear how the carrying strap (14) is attached to the handle. Particularly, the structure involved with reference characters (13) and (15) in Figure 1 is unclear due to poor drawing quality, and it is unclear as to how the shoulder strap is attached to the shopping bag.

Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

8. The disclosure is objected to because of the following informalities:

Page 7 of the specification associates reference character 29 with a chip, while claim 14 associates reference character 29 with horizontal struts.

Appropriate correction is required.

Claim Objections

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9. Claim 8 is objected to because of the following informalities: In line 5, the word "two" has been misspelled. Also, in line 6, the word "shoulder" has been misspelled.

Appropriate correction is required.

10. Claim 11 is objected to because of the following informalities: In line 6, the word "distance" has been misspelled. Appropriate correction is required.

Claim Rejections - 35 USC § 112

11. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

12. Claims 7, 8, 11, 12, and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In light of the disclosure, it is unclear as to what limitations the term "closing body" is intended to impose. Examiner assumes that this "closing body" is in fact the "device for receiving the shoulder strap" from page 3, paragraph 6, of the specification. Because no structure for this element was set forth, Examiner takes the position in this Office Action that any body portion that receives a shoulder strap and somehow uses hooks to attach the strap to a bag will satisfy any claim limitation involving the term "closing body."

13. Regarding claim 11, in light of the disclosure, it is unclear as to what limitations the phrase "holding the handles plane-parallel and at a distance" is intended to impose. There is no description of this "distance" in the specification. In this Office Action, Examiner takes the position that this distance can in fact be a distance of discernable

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length of space between the handles, or a distance of zero - the handles in fact touching one another.

14. Regarding claim 12, in light of the disclosure it is unclear as to what structural limitations are intended to be placed on the lower support in saying that it has a "rectangular shape." The specification, on page 5, paragraph 3, states that the lower support has a "rectangular hook shape" while paragraph 2 states that the entire interruption is "implemented as essentially a rectangular surface in the top view." Because the drawings offer no visual support for the claimed "rectangular shape" of the lower support member, it is unclear if the lower support member also has a rectangular surface when viewed from the top, like the entire interruption, or if other structure is intended. In this Office Action, Examiner takes the position that the lower support member is intended to have a rectangular shape when viewed from above.

Also in claim 12, the language of the claim renders it unclear as to whether the lower support has a 'rectangular shape for engaging', this 'rectangular shape for engaging' being located behind a region, or if the lower support has a 'rectangular shape', this 'rectangular shape' in fact engaging the area behind a region.

15. Regarding claim 13, the claim recites the limitation "the region of the contact surface" in line 5. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 1, 3, 4, 5, 6, 14, 17, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Posner (4,871,100) in view of Cohen (4,376,502) and Mathiesen (2,165,869), and further in view of Lucas et al. (4,560,096). Posner discloses a shopping bag having at least two handles (13a and 14a) and a sack, the handles being attached on the open side of the sack on opposite lengthwise edges of the sack (Figure 1), each handle having at least one carrying handle (18) and one hooking member (17 or 61) for hooking in, on, or over opposite walls (12a) of a frame or vessel (12b), the hooking members positioned on the lateral surface of the handles which lie diametrically opposite the open side of the sack. Posner does not disclose the handles each having two hooks, the hooks spaced by at least half of the length of the lengthwise edges of the handle.

Cohen and Mathiesen, however, collectively teach that it is already well known in the art to utilize a pair of spaced apart hooks on a single side of a basket/bag when hanging that basket/bag from some supporting structure. Specifically, Cohen teaches the use of two hooks (64) spaced apart along the same side (18) of a basket. Cohen's hooks allow the basket to be suspended on or over a wall of a shopping cart. Similarly, Mathiesen teaches the use of a pair of spaced apart hooks (17) along the same side of a flexible bag, used to suspend a flexible bag from a support structure.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the shopping bag of Posner by utilizing two spaced apart hooks along each side of the bag, effectively the bags two handles, as

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taught by Cohen and Mathiesen, in order to more securely suspend the shopping bag from a shopping cart. The use of two spaced apart hooks would reduce or eliminate the potential for the shopping bag to swing back and forth within the shopping cart due to the likelihood that the single hook would act as a pivot point if the shopping bag did not come in contact with and rest along the bottom of the shopping cart.

To the degree that it could be argued the hooking members (17 and 61) of Posner do not structurally resemble to those of Cohen and Mathiesen, it could further be argued that it would not have been obvious to provide a pair of the Posner hooking members, as taught by Cohen and Mathiesen. Lucas et al., however, discloses a shopping bag suspended within a shopping cart using and teaches the use of hooks (31) that do in fact structurally resemble those used by Cohen and Mathiesen.

Therefore, it would also have been obvious to one having ordinary skill in the art at the time the invention was made to first replace the hooking members of Posner with an art equivalent hanging means such as the hooks taught by Lucas et al., and to then provide a pair of such hooks, as taught by Cohen and Mathiesen.

18. Regarding the limitation of claim 1 requiring the hooks to be spaced by at least half of the length of the lengthwise edges of the handle, the hooks of both Cohen and Mathiesen are clearly spaced more than half the length of the edge on which they are positioned. Because the Applicant has not defined any particular advantage or reason for such spacing, Examiner considers this limitation to be only a design choice; one that would have been obvious to one having ordinary skill in the art at the time the invention

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was made, especially after observing the special teachings of both Cohen and Mathiesen. Therefore, Examiner considers this limitation in the claim to be satisfied.

19. Regarding claim 3, the hooks of Cohen are clearly positioned in and/or on the outer fourth of the edge on which they are attached. Because the Applicant has not disclosed any particular advantage or reason for such positioning, Examiner considers this limitation to be simply design choice; one that would have been obvious to one having ordinary skill in the art at the time the invention was made, especially after observing the special teachings of Cohen. Therefore, Examiner considers the limitations of this claim to be satisfied.

20. Regarding claims 4 and 18, the handles (13a and 14a) clearly extend 100% of the sack width on the lengthwise edges of the open side, thus satisfying the limitations of the claims.

21. Regarding claim 5, the hooking member (61) of Posner, as well as the hooks (64 and 17) of Cohen and Mathiesen, respectively, all project away from the open side of their respective containers and are subsequently curved downward, thus satisfying the limitations of this claim.

22. Regarding claims 6 and 19, the art as applied to claim 1 above discloses the claimed invention except for the hooks specifically having a thickness of less than 2 cm or less than 8 mm measured parallel to the handle. Because the Applicant has disclosed that these sizes are chosen so that the hooks can be attached to the shopping cart (page 3 paragraph 3), Examiner takes the position that it would have been obvious to one having ordinary skill in the art to size the hooks of the art as

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applied to claim 1 above in a similar fashion, since the prior art's hooks are also attached to a shopping cart.

23. Regarding claim 14, the art as applied to claim 1 above discloses a shopping cart (Posner and Lucas et al.) having a wire basket and the handles of the shopping bag being hung diametrically opposite one another on the upper edges of the wire basket using the hooks, effectively satisfying the limitations of the claim.

24. Regarding claim 17, the art as applied to claim 1 above discloses the claimed invention except for the hooks on the handle being positioned in and/or on the outer sixth of the handle. Because the Applicant has not disclosed any particular advantage or reason for such sizing, Examiner considers this limitation to be simply design choice, one that would have been obvious to one having ordinary skill in the art, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

25. Claim 2 rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above in view of Yellin (4,194,601). The art as applied to claim 1 above discloses the claimed invention, including the sack having an essentially rectangular opening on the open side in the open state, but fails to disclose the transverse surfaces of the sack which are not terminated on top by a handle being stretchable against an elastic resistance.

Yellin, however, teaches that it is old and well known in the art to provide elastic resistance along the upper edge of a bag that does not terminate in a handle.

Specifically, Yellin discloses that an elastic member (34) can be attached to the upper

edges of panels (24), the panels that do not terminate in handles as panels (18) do.

Yellin teaches that these elastic members permit full utilization of the relatively large storage compartment of the bag while minimizing the potential for items to fall out of the bag (col. 2 lines 38-41).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the shopping bag of the art as applied to claim 1 above by including elastic members in the upper edges of the bag that do not terminate in handles, as taught by Yellin, in order to reduce the chance of items falling out of the bag when the bag was not stretched out and attached to the shopping cart, as the elastic members would help keep the upper extent of the bag somewhat closed.

26. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above in view of Abelbeck et al. (5,961,018), and further in view of Potts (2,718,988). Regarding claim 7, the art as applied to claim 1 above discloses the claimed invention except for the shopping bag comprising a shoulder strap having a closing body on each end to receive a carrying belt and two space parallel hooks, at least two pairs of hook being positioned approximately at one height and on opposite sides of the handles which are moved together.

Abelbeck et al., however, discloses a bag that can be hung on a shopping cart, and teaches that it is desirable to provide a detachable shoulder strap on the bag. The shoulder strap allows a user to more conveniently carrying the bag, and Abelbeck et al. specifically teaches that it is desirable to make the shoulder strap detachable because when in use on a shopping cart, the length of material from which the shoulder strap is

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comprised could be accessible and potentially dangerous to a small child (col. 4 lines 20-23). In order to make the shoulder strap detachable, Abelbeck et al. teaches the use of hooks (20, Figure 2) at each end of the shoulder strap which hook onto protruding elements (22) of the bag.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the shopping bag of the art as applied to claim 1 above by including a detachable shoulder strap with hooks, as taught by Abelbeck et al., in order to provide a shoulder strap for convenience while also protecting any small children from harming themselves with the strap while the shopping bag is attached to a shopping cart. While Abelbeck et al. teaches that the hooks can be attached to rings protruding from the bag, one of ordinary skill in the art would recognize that in the absence of such rings on the shopping bag of the art as applied to claim 1 above, one could attach the shoulder strap hook members to the hook members located on the handle of the shopping bag.

Since Abelbeck et al. only teaches a single hook on each end of the shoulder strap, when connected to the shopping bag of the art as applied to claim 1 above, the shopping bag would likely be held crookedly, as the weight of the bag would only be supported by two of the four hook members on the handle. One of ordinary skill in the art would realize that the bag would be held more stationary and securely if all four hooks member on the handle were supported by the shoulder strap.

Now, Pott teaches that it is old and known in the art to provide a pair of hooks at each end of a shoulder strap (Figure 3) to support an object therefrom. Therefore, it

would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the shopping bag as applied to claim 1 above in view of Abelbeck et al. by providing a pair of hooks at each end of the shoulder strap, as taught by Pott, in order to better stabilize and balance the shopping bag when carried by the user with the shoulder strap.

27. Regarding the limitations of claim 7 involving the action of the handles closing, the initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by the art as applied to claim 1 in view of Abelbeck et al., and further in view of Potts which is capable of being used in the intended manner, i.e., the handles are drawn together when the shoulder strap hooks engage the handle hooking members. There is no structure in the art as applied to claim 1 in view of Abelbeck et al., and further in view of Potts that would prohibit such functional intended use (see MPEP 2111).

28. Similarly, regarding claim 8, the shoulder strap hooks of the art as applied to claim 1 in view of Abelbeck et al., and further in view of Potts are implemented and attached on the closing body (upper portion of Potts' hooks that are attached to the strap) in such a way that if the closing body was displaced along the upper edge of the pair of handles – independent of the direction – in the region of the handle hooks, each of the two shoulder strap hooks, which are positioned in parallel and point downward, would engage in one of the two handle hooks, effectively satisfying the limitations of the claim. Again, there is no structure in the art as applied to claim 1 in view of Abelbeck et

al., and further in view of Potts that would prohibit such functional intended use (see MPEP 2111).

29. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above in view of Orce (6,231,233). The art as applied to claim 1 above discloses the claimed invention except for the shopping bag being embodied as at least partially transparent.

Orce, however, discloses a shopping bag for hanging on a shopping cart (col. 3 lines 4-9) and teaches that it is desirable to embody at least a portion of the bag's sidewall as completely transparent, allowing a user to see the objects contained within the bag at all times, even when the bag is closed. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the shopping bag of that art as applied to claim 1 above by making at least a portion of the bag completely transparent, as taught by Orce, so that the user would be able to recognize or locate objects within the bag without having to first open the bag.

30. Claims 10, 15, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above in view of Eckstein (4,907,633). Regarding claims 10 and 15, the art as applied to claim 1 above discloses the claimed invention except for the sack being manufactured from three surfaces, one surface, the main surface, connecting the two handles without a seam and the ends of this main surface being connected essentially over the entire sack width to one handle and the two remaining transverse surfaces being connected to the main surface by gluing, welding, or sewing.

Eckstein, however, discloses a carrier bag and teaches that such bags can be formed from three surfaces. One surface (60/62) makes up three faces of the bag, two side faces and a bottom face, all integral with one another. The other two surfaces (64) are attached to this first surface by sewing (col. 4 line 63) to add the final two side faces of the bag, enclosing the bag's volume. Now, Eckstein teaches that the bag faces including handles (68) are the two separate surfaces (64) that are added to the third surface (60/62), the third surface integrally forming the two remaining side faces (62) and the bottom face (60). Essentially opposite of Eckstein, the present invention teaches that the bag faces including the handles are part of the third surface integrally forming the two side faces and the bottom face, at which point two other surfaces are added to provide the two remaining side faces.

In either case, Eckstein or the present invention, a bag with four side faces and a bottom face is formed from three surfaces. Whether the bag is assembled according to Eckstein or the present invention, a functional carrier bag will result. Eckstein simply teaches that it is old and well known in the art to manufacture a bag using three surfaces, one surface forming two side faces integral with a bottom face, the other two surfaces forming the remaining two side faces. Examiner takes the position that there is no inventive step in reversing the order of these surfaces.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the four-sided shopping bag of the art as applied to claim 1 above out of three surfaces, as taught by Eckstein, and to configure these three surfaces to form each face of the bag in either of the combinations

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mentioned above, whether that of Eckstein, or that of the present invention. This method of manufacturing saves cost and process time in that only two of the side faces have to be sewn to the bottom face, as the other two faces are already integral to the bottom face.

31. Regarding claim 16, the art as applied to claim 1 above discloses two of the shopping bag's faces being delimited along their top edge by an elastic member, effectively satisfying the limitations of the claim.

32. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 1 above in view of Hartmann (3,528,471). The art as applied to claim 1 above discloses the claimed invention except for each of the two handles having at least one catch, each catch being assignable to a corresponding interruption on the other handle when the handles are moved together, the catch holding the handles plane-parallel and at a distance when guided through the interruption and the catch having at least one support, which moves past the interruption surface and catches behind it.

Hartmann, however, discloses a closable bag having two handles (12 and 13) disposed along the entire width of the lengthwise edges of the bag's opening, resembling the handles of the art as applied to claim 1 above. Hartmann then teaches that these handles can be held together using at least one catch (stud 19) on one handle, each catch being assignable to a corresponding interruption (recess 26) on the other handle when the handles are moved together, the catch holding the handles plane parallel and touching one another (Figure 1) when guided through the interruption and

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the catch having at least one support (32), which moves past the interruption surface (36) and catches behind it. Hartmann further teaches that such a fastening mechanism is desirable on a carrier bag so that the bag can be readily opened by a user, but will not inadvertently open on its own due to the stresses placed on the bag walls by the load carried within the bag.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the shopping bag of the art as applied to claim 1 above by including a fastening mechanism, such as that taught by Hartmann, to hold the handles of the shopping bag together so that the bag did not inadvertently open on its own due to the stresses placed on the bag walls by the load, perhaps delicate groceries, carried in the bag. To the degree that it can be argued the art as applied to claim 1 above already has an elastic member urging the bag closed, the elastic does not completely seal the top of the bag, allowing items within the bag to potentially fall out.

Conclusion

33. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin M. Larson whose telephone number is (571) 272-8649. The examiner can normally be reached on M-Th 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on (571) 272-4544. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JML
11/30/05



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SUPERVISORY PATENT EXAMINER